

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

THERMOLIFE INTERNATIONAL,  
LLC,

Plaintiff,

v.

BETTER BODY SPORTS, LLC, et  
al.,

Defendants,

And Related Counterclaims and  
Consolidated Actions.

CASE NO. CV12-09229 GAF (FFM<sub>x</sub>)

**STIPULATED PROTECTIVE  
ORDER**

**[FED. R. CIV. P. 26(c)]**

**Note Changes Made by the Court**

Pursuant to Fed. R. Civ. P. 26(c), Plaintiff, Thermolife International, Inc. and Defendants, All Star Health; Lecheek, LLC; Lone Star Distribution; Maximum Human Performance, LLP; Purus Labs, Inc.; Reaction Nutrition, LLC; Redefine Nutrition LLC; Bronson Laboratories, Inc.; Bio-Engineered Supplements and Nutrition, Inc.; Pharmafreak Holdings, Inc.; Nutrex Research, Inc.; General Nutrition Corporation; GNC Corporation; General Nutrition Centers, Inc.; Infinite Labs LLC; Muscle Warfare, Inc.; Hi-Tech Pharmaceuticals, Inc.; DNA Sports Nutrition; and Nutrition Zone Worldwide, Inc. through undersigned counsel, jointly submit this Stipulated Protective Order to govern the handling of

1 information and materials produced in the course of discovery or filed with the  
2 Court in this action.

3 **1. PURPOSES AND LIMITATIONS**

4 Disclosure and discovery activity in this action are likely to involve  
5 production of confidential, proprietary or private information for which special  
6 protection from public disclosure and from use for any purpose other than  
7 prosecuting this litigation would be warranted. Accordingly, the parties hereby  
8 stipulate to and petition the Court to enter the following Stipulated Protective  
9 Order. The parties acknowledge that this Order does not confer blanket protections  
10 on all disclosures or responses to discovery and that the protection it affords from  
11 public disclosure and use extends only to the limited information or items that are  
12 entitled to confidential treatment under applicable legal principles. The parties  
13 further acknowledge, as set forth in Section 13.4, below, that this Stipulated  
14 Protective Order does not entitle them to file confidential information under seal;  
15 Civil Local Rule 79-5 sets forth the procedures that must be followed and the  
16 standards that will be applied when a party seeks permission from the court to file  
17 materials under seal.

18 **2. DEFINITIONS**

19 2.1. Challenging Party: a Party or Non-Party that challenges the  
20 designation of information or items under this Order.

21 2.2. “Confidential” Information or Items: information (regardless of  
22 how generated, stored or maintained) or tangible things that qualify for protection  
23 under Federal Rules of Civil Procedure 26(c).

24 2.3. Designated House Counsel: House Counsel who seeks access  
25 to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in  
26 this matter.

1                   2.4    Designating Party: a Party or Non-Party that designates  
2 information or items that it produces in disclosures or in responses to discovery as  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
4 ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY.”

5                   2.5    Disclosure or Discovery Material: all items or information,  
6 regardless of the medium or manner generated, stored, or maintained (including,  
7 among other things, testimony, transcripts, or tangible things) that are produced or  
8 generated in disclosures or responses to discovery in this matter.

9                   2.6.   Expert: a person with specialized knowledge or experience in a  
10 matter pertinent to the litigation who (1) has been retained by a Party or its Outside  
11 Counsel of Record to serve as an expert witness or as a consultant in this action,  
12 (2) is not a past or a current employee of a Party or of a Party’s competitor, and (3)  
13 at the time of retention, is not anticipated to become an employee of a Party or of a  
14 Party’s competitor.

15                   2.7.    “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
16 ONLY” Information or Items: extremely sensitive “Confidential Information or  
17 Items,” disclosure of which to another Party or Non-Party would create a  
18 substantial risk of serious harm that could not be avoided by less restrictive means.

19                   2.8.    “CONFIDENTIAL — OUTSIDE COUNSELS’ EYES ONLY”  
20 Information or Items: extremely sensitive “HIGHLY CONFIDENTIAL —  
21 ATTORNEYS’ EYES ONLY” Information or Items,” disclosure of which to  
22 another Party or Non-Party or their House Counsel would create a substantial risk  
23 of serious harm that could not be avoided by less restrictive means

24                   2.9.    House Counsel: attorneys who are employees of a Party to this  
25 action. House Counsel does not include Outside Counsel of Record or any other  
26 outside counsel.

1                   2.10. Non-Party: any natural person, partnership, corporation,  
 2 association, or other legal entity not named as a Party to this action.

3                   2.11. Outside Counsel of Record: attorneys (as well as their support  
 4 staff) who are not employees of a Party to this action but are retained to represent  
 5 or advise a party to this action and have appeared in this action on behalf of that  
 6 party or are affiliated with a law firm which has appeared on behalf of that party.

7                   2.12. Party: any party to this action, including all of its officers,  
 8 directors, employees, consultants, retained experts, and Outside Counsel of Record  
 9 (and their support staff).

10                  2.13. Producing Party: a Party or Non-Party that produces Disclosure  
 11 or Discovery Material in this action.

12                  2.14. Professional Vendors: persons or entities that provide litigation  
 13 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
 14 demonstrations; and organizing, storing, or retrieving data in any form or medium)  
 15 and their employees and subcontractors.

16                  2.15. Protected Material: any Disclosure or Discovery Material that is  
 17 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL –  
 18 ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL – OUTSIDE COUNSELS’  
 19 EYES ONLY.”

20                  2.16. Receiving Party: a Party that receives Disclosure or Discovery  
 21 Material from a Producing Party.

### 22                  3.    SCOPE

23                  The protections conferred by this Stipulation and Order cover not only  
 24 Protected Material (as defined above), but also (1) any information copied or  
 25 extracted from Protected Material; (2) copies, excerpts, summaries, or  
 26 compilations of Protected Material; and (3) any testimony, conversations, or  
 27 presentations by Parties or counsel that might reveal Protected Material. However,  
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1 the protections conferred by this Stipulation and Order do not cover the following  
2 information (a) any information that is in the public domain at the time of  
3 disclosure to a Receiving Party or becomes part of the public domain after its  
4 disclosures to a Receiving Party as a result of publication not involving a violation  
5 of this Order, including becoming part of the public record through trial or  
6 otherwise; and (b) any information known to the Receiving Party prior to the  
7 disclosure or obtained by the Receiving Party after the disclosure from a source  
8 who obtained the information lawfully and under no obligation of confidentiality to  
9 the Designating Party. Any use of Protected Material at trial shall be governed by  
10 a separate agreement or order.

#### 11 **4. DURATION**

12 Even after final disposition of this litigation, the confidentiality obligations  
13 imposed by this Stipulation and Order shall remain in effect until a Designating  
14 Party agrees otherwise in writing or a court order otherwise directs. Final  
15 disposition shall be deemed to be the later of (1) dismissal of all claims and  
16 defenses in this action with or without prejudice; and (2) final judgment herein  
17 after the completion and exhaustion of all appeals, re-hearings, remands, trials, or  
18 reviews of this action, including the time limits for filing any motions or  
19 applications for extension of time pursuant to applicable law.

#### 20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1. Exercise of Restraint and Reasonable Care in Designating  
22 Material for Protection. Each Party or Non-Party that designates information or  
23 items for protection under this Order must take care to limit any such designation  
24 to specific material that qualifies under the appropriate standards. To the extent it  
25 is practical to do so, the Designating Party must designate for protection only those  
26 parts of material, documents, items, or oral or written communications that qualify  
27 – so that other portions of the material, documents, items, or communications for  
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1 which protection is not warranted are not swept unjustifiably within the ambit of  
2 this Order.

3 Mass, indiscriminate, or routinized designations are prohibited.  
4 Designations that are shown to be clearly unjustified, or that have been made for an  
5 improper purpose (e.g., to unnecessarily encumber or retard the case development  
6 process, or to impose unnecessary expenses and burdens on other parties) are  
7 prohibited.

8 If it comes to a Designating Party's attention that information or items  
9 that it designated for protection do not qualify for protection at all or do not qualify  
10 for the level of protection initially asserted, that Designating Party must promptly  
11 notify all other parties that it is withdrawing the mistaken designation.

12 5.2. Manner and Timing of Designations. Except as otherwise  
13 provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as  
14 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
15 protection under this Order must be clearly so designated before the material is  
16 disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g. paper or  
19 electronic documents, but excluding transcripts of depositions or other pretrial or  
20 trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or  
21 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or  
22 "CONFIDENTIAL – OUTSIDE COUNSELS' EYES ONLY" to each page that  
23 contains protected material.

24 A Party or Non-Party that makes original documents or  
25 materials available for inspection need not designate them for protection until after  
26 the inspecting Party has indicated which material it would like copied and  
27 produced. During the inspection and before the designation, all of the material  
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1 made available for inspection shall be deemed “CONFIDENTIAL – OUTSIDE  
2 COUNSELS’ EYES ONLY.” After the inspecting Party has identified the  
3 documents it wants copied and produced, the Producing Party must determine  
4 which documents, or portions thereof, qualify for protection under this Order.  
5 Then, before producing the specified documents, the Producing Party must affix  
6 the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
7 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’  
8 EYES ONLY”) to each page that contains Protected Material. If only a portion or  
9 portions of the material on a page qualifies for protection, the Producing Party also  
10 must clearly identify the protected portion(s) (e.g., by making appropriate  
11 markings in the margins) and must specify, for each portion, the level of protection  
12 being asserted.

13 (b) for testimony given in deposition or in other non-  
14 dispositive pretrial proceedings, (FFM) that the Designating Party identify on the  
15 record, before the close of the deposition, hearing, or other proceeding, all  
16 protected testimony, and specify the level of protection being asserted. When it is  
17 impractical to identify separately each portion of testimony that is entitled to  
18 protection, and it appears that substantial portions of the testimony may qualify for  
19 protection, the Designating Party may invoke on the record (before the deposition,  
20 hearing, or other proceeding is concluded) a right to have up to 21 days after its  
21 receipt of the transcript to identify the specific portions of the testimony as to  
22 which protection is sought and to specify the level of protection being asserted.  
23 Only those portions of the testimony that are appropriately designated for  
24 protection within the 21-day period shall be covered by the provisions of this  
25 Stipulated Protective Order. Alternatively, for depositions, a Designating Party  
26 may specify, at the deposition or up to 21 days after its receipt of the transcript if  
27 that a period is properly invoked, that the entire transcript shall be treated as  
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1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
2 ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY.”

3 Parties shall give the other parties notice if they reasonably  
4 expect a deposition, ~~hearing or other proceeding~~ (FFM) to include Protected  
5 Material so that the other parties can ensure that only authorized individuals who  
6 have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A) are  
7 present at those proceedings. The use of a document as an exhibit at a deposition  
8 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL –  
10 OUTSIDE COUNSELS’ EYES ONLY.”

11 Transcripts containing Protected Material shall have an obvious  
12 legend on the title page that the transcript contains Protected Material, and the title  
13 page shall be followed by a list of all pages (including line numbers as appropriate)  
14 that have been designated as Protected Material and the level of protection being  
15 asserted by the Designating Party. The Designating Party shall inform the court  
16 reporter of these requirements. Any transcript before the expiration of a 21-day  
17 period for designation shall be treated during that period as if it had been  
18 designated “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY” in its  
19 entirety unless otherwise agreed. After the expiration of that period, the transcript  
20 shall be treated only as actually designated.

21 (c) for information produced in some form other than  
22 documentary, and for any other tangible items, that the Producing Party affix in a  
23 prominent place on the exterior of the container or containers in which the  
24 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL –  
26 OUTSIDE COUNSELS’ EYES ONLY.” If only a portion or portions of the  
27 information or item warrant protection, the Producing Party, to the extent  
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1 practicable, shall identify the protected portion(s) and specify the level of  
2 protection being asserted.

3           5.3 Inadvertent Failures to Designate. If timely corrected, an  
4 inadvertent failure to designate qualified information or items does not, standing  
5 alone, waive the Designating Party's right to secure protection under this Order for  
6 such material. Upon timely correction of a designation, the Receiving Party must  
7 make reasonable efforts to assure that the material is treated in accordance with the  
8 provisions of this Order.

9           **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10           6.1. Timing of Challenges. Any Party or Non-Party may challenge  
11 a designation of confidentiality at any time. Unless a prompt challenge to a  
12 Designating Party's confidentiality designation is necessary to avoid foreseeable  
13 substantial unfairness, unnecessary economic burdens, or a significant disruption  
14 or delay of the litigation, a Party does not waive its right to challenge a  
15 confidentiality designation by electing not to mount a challenge promptly after the  
16 original designation is disclosed.

17           6.2. Meet and Confer. A Challenging Party shall initiate the dispute  
18 resolution process by providing written notice of each designation it is challenging  
19 and describing the bases for each challenge. To avoid ambiguity as to whether a  
20 challenge has been made, the written notice must recite that the challenge to  
21 confidentiality is being made in accordance with this specific paragraph of the  
22 Protective Order. The parties shall attempt to resolve each challenge in good faith  
23 and must begin the process by conferring directly (in person or by voice dialogue; other  
24 forms of communication are not sufficient) within 14 days of the date of service of  
25 notice. In conferring, the challenging Party must explain the basis for its belief  
26 that the confidentiality designation was not proper and must give the Designating  
27 Party an opportunity to review the designated material, to reconsider the  
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1 circumstances, and, if no change in designation is offered, to explain the basis for  
2 the chosen designation. A Challenging Party may proceed to the next stage of the  
3 challenge process only if it has engaged in this meet and confer process first or  
4 establishes that the Designating Party is unwilling to participate in the meet and  
5 confer process in a timely manner.

6           6.3. Judicial Intervention. If the Parties cannot resolve a challenge  
7 without court intervention, the Designating Party shall file and serve a motion to  
8 retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local  
9 Rule 79-5, if applicable) within 21 days of initial notice of challenge or within 14  
10 days of the parties agreeing that the meet and confer process will not resolve their  
11 dispute, whichever is earlier. After the Designating Party has prevailed on two  
12 such motions, the burden to move shifts to the Challenging Party in order to avoid  
13 an abuse of the process, but the Designating Party still bears the burden of  
14 persuasion. Each such motion must be accompanied by a competent declaration  
15 affirmative that the movant has complied with the meet and confer requirements  
16 imposed in the preceding paragraph. Failure by the Designating Party to make  
17 such a motion including the required declaration within 21 days (or 14 days, if  
18 applicable) shall automatically waive the confidentiality designation for each  
19 challenged designation. In addition, the Challenging Party may file a motion  
20 challenging a confidentiality designation at any time if there is good cause for  
21 doing so, including a challenge to the designations of a deposition transcript or any  
22 portion as thereof. Any motion brought pursuant to this provision must be  
23 accompanied by a competent declaration affirming that the movant has complied  
24 with the meet and confer requirements imposed by the preceding paragraph.

25           The burden of persuasion in any such challenge proceeding shall be  
26 on the Designation Party. Frivolous challenges and those made for an improper  
27 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
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1 parties) may expose the Challenging Party to sanctions. Unless the Designating  
2 Party has waived the confidentiality designations by failing to file a motion to  
3 retain confidentiality as described above, all parties shall continue to afford the  
4 material in question the level of protection to which it is entitled under the  
5 Producing Party's designation until the court rules on the challenge.

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 7.1. Basic Principles. A Receiving Party may use Protected  
8 Material that is disclosed or produced by another Party, or by a Non-Party who  
9 agrees to be bound by this Order, in connection with this case only for prosecuting,  
10 defending, or attempting to settle this litigation. Such Protected Material may be  
11 disclosed only to the categories of persons and under the conditions described in  
12 this Order. When the litigation has been terminated, a Receiving Party must  
13 comply with the provisions of section 15, below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a  
15 location and in a secure manner<sup>1</sup> that ensures that access is limited to the persons  
16 authorized under this Order.

17 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless  
18 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
19 Receiving Party may disclose any information or item designated  
20 "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of record in this  
22 action, as well as employees of said Outside Counsel to whom it is reasonably  
23 necessary to disclose the information for this litigation and who have signed the  
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (b) the officers, directors, and employees (including House  
26 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for

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28 <sup>1</sup> It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected  
Material in password-protected form.

1 this litigation and who have signed the “Acknowledgment and Agreement to Be  
2 Bound” (Exhibit A);

3 (c) Experts (as defined in this Order) of the Receiving Party  
4 to whom disclosure is reasonably necessary for this litigation and who have signed  
5 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff, and professional jury or  
8 trial consultants, and Professional Vendors to whom disclosure is reasonably  
9 necessary for this litigation and who have signed the “Acknowledgment and  
10 Agreement to Be Bound” (Exhibit A);

11 (f) during their depositions, witness in the action to whom  
12 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
13 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating  
14 party or ordered by the court. Pages of transcribed deposition testimony or  
15 exhibits to depositions that reveal Protected Material shall be separately bound by  
16 the court reporter and may not be disclosed to anyone except as permitted under  
17 this Stipulated Protective Order; and

18 (g) the author and named recipient of a document containing  
19 the information or a custodian or other person who otherwise possessed or knew  
20 the information.

21 7.3. Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’  
22 EYES ONLY.” Unless otherwise ordered by the court or permitted in writing by  
23 the Designating Party, a Receiving Party may disclose any information or item  
24 designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” only  
25 to:

26 (a) the Receiving Party’s Outside Counsel of record in this  
27 action, as well as employees of said Outside Counsel to whom it is reasonably  
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1 necessary to disclose the information for this litigation and who have signed the  
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (b) One Designated House Counsel of the Receiving Party  
4 (1) who has no involvement in decision-making relating to the marketing or sale of  
5 any product containing D-Aspartic Acid, a D-Aspartate Salt or a D-Aspartate Ester  
6 (2) to whom disclosure is reasonably necessary for this litigation, (3) who has  
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as  
8 to whom the procedures set forth in paragraph 7.4(a)(1), below have been  
9 followed;

10 (c) Experts of the Receiving Party (1) to whom disclosure is  
11 reasonably necessary for this litigation and (2) who have signed the “Agreement to  
12 Be Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set  
13 forth in paragraph 7.4(a)(2), below, have been followed;

14 (d) the court and its personnel;

15 (e) court reporters, their staff, and professional jury or trial  
16 consultants, and Professional Vendors to whom disclosure is reasonably necessary  
17 for this litigation and who have signed the “Acknowledgment and Agreement to  
18 Be Bound” (Exhibit A); and

19 (f) the author and named recipient of a document containing  
20 the information or a custodian or other person who otherwise possessed or knew  
21 the information.

22 7.4 Procedures for Approving or Objecting to Disclosure of  
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
24 Items to Designated House Counsel or Experts.

25 (a)(1) Unless otherwise ordered by the court or agreed to in  
26 writing by the Designating Party, a Party that seeks to disclose to Designated  
27 House Counsel any information or item that has been designated “HIGHLY  
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CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written disclosure to the Designation Party that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may become involved, in any decision-making relating to the marketing or sale of any product containing D-Aspartic Acid, a D-Aspartate Salt or D-Aspartate Ester.<sup>2</sup>

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written disclosure to the Designation Party that (1) sets forth the full name of the Expert and the city and state of his or her residence, (2) attaches a copy of the Expert’s current resume, (3) identifies the Expert’s current employer(s), (4) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,<sup>3</sup> (5) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years; and (6) any patents or patent applications on which the Expert is a named

<sup>2</sup> Designated House Counsel who receives “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this Order must disclose any relevant changes in job duties or responsibilities prior to final disposition of the litigation to allow the Designating Party to evaluate any later-arising decision-making responsibilities relating to the marketing or sale of any product containing D-Aspartic Acid.

<sup>3</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 inventor that claim a product containing any of D- and/or L-Aspartic Acid, a D-  
2 and/or L-Aspartate Salt or a D- and/or L-Aspartate Ester; a method of manufacture,  
3 including the manufacture of D- or L-Aspartic Acid, a D- or L-Aspartate Salt or a  
4 D- or L-Aspartate Ester and the product containing D- and/or L-Aspartic Acid, a  
5 D- and/or L-Aspartate Salt or a D- and/or L-Aspartate Ester; or a method of use  
6 employing any of D- and/or L-Aspartic Acid, a D- and/or L-Aspartate Salt or a D-  
7 and/or L-Aspartate Ester.

8 (b) A Party that makes a disclosure and provides the  
9 information specified in the preceding respective paragraphs may disclose the  
10 subject Protected Material to the identified Designated House Counsel or Expert  
11 unless, within seven (7) days of delivering the request, the Party receives a written  
12 objection from the Designating Party. Any such objection must set forth in detail  
13 the grounds on which it is based.

14 (c) A Party that receives a timely written objection must  
15 meet and confer with the Designating party (through direct voice to voice  
16 dialogue) to try to resolve the matter by agreement within seven (7) days of the  
17 written objection. If no agreement is reached, the Party seeking to make the  
18 disclosure to Designated House Counsel or the Expert may file a motion as  
19 provided by Civil Local Rule 37 (and in compliance with Civil Local Rule 79-5, if  
20 applicable) seeking permission from the court to do so. Any such motion must  
21 describe the circumstances with specificity, set forth in detail the reasons why the  
22 disclosure to Designated House counsel or the Expert is reasonably necessary,  
23 assess the risk of harm that the disclosure would entail, and suggest any additional  
24 means that could be used to reduce that risk. In addition, any such motion must be  
25 accompanied by a competent declaration describing the parties' efforts to resolve  
26 the matter by agreement (i.e., the extent and the content of the meet and confer  
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1 discussions) and setting forth the reasons advanced by the Designating Party for its  
2 refusal to approve the disclosure.

3 In any such proceeding, the Party opposing disclosure to  
4 Designated House counsel or the Expert shall bear the burden of proving that the  
5 risk of harm that the disclosure would entail (under the safeguards proposed)  
6 outweighs the Receiving Party's need to disclose the Protected Material to its  
7 Designated House Counsel or Expert.

8 7.5 Disclosure of "CONFIDENTIAL – OUTSIDE COUNSELS'  
9 EYES ONLY" Information or Items. Unless otherwise ordered by the court or  
10 permitted in writing by the Designating Party, a Receiving Party may disclose any  
11 information or item designated "CONFIDENTIAL – OUTSIDE COUNSELS'  
12 EYES ONLY" only to:

13 (a) the Receiving Party's Outside Counsel of Record in this  
14 action, as well as employees of said Outside Counsel of Record to whom it is  
15 reasonably necessary to disclose the information for this litigation and who have  
16 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (b) Experts of the Receiving Party (1) to whom disclosure is  
18 reasonably necessary for this litigation and (2) who have signed the "Agreement to  
19 Be Bound by Protective Order" (Exhibit A), and (3) as to whom the procedures set  
20 forth in paragraph 7.4(a)(2), above, have been followed;

21 (c) the court and its personnel;

22 (d) court reporters, their staff, and professional jury or trial  
23 consultants, and Professional Vendors to whom disclosure is reasonably necessary  
24 for this litigation and who have signed the "Acknowledgment and Agreement to  
25 Be Bound" (Exhibit A); and  
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(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

**8. PROSECUTION BAR**

Absent written consent from the Producing Party, any individual who actually reviews “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY AND SUBJECT TO PROSECUTION BAR” information shall not be involved in the prosecution of patents or patent applications relating to products, formulations or compositions containing D-Aspartic Acid, a D-Aspartate salt or a D-Aspartate ester; methods of use related to products, formulations or compositions containing D-Aspartic Acid, a D-Aspartate salt or D-Aspartate ester; or methods of manufacture, including the manufacture of D-Aspartic Acid, a D-Aspartate Salt, or a D-Aspartate Ester and a product, formulation or composition containing D-Aspartic Acid, a D-Aspartate Salt or a D-Aspartate Ester, including without limitation the patent asserted in this action and any patent or application claiming priority to or otherwise related to the patent asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. “Prosecution” as used in this paragraph, includes, for example, participating on behalf of the patentee in original prosecution, reissue or reexamination proceedings, but does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, ex parte reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

1 AND SUBJECT TO PROSECUTION BAR” information is first received by the  
2 affected individual and shall end two (2) years after final termination of this  
3 action.<sup>4</sup>

4 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
5 **PRODUCED IN OTHER LITIGATION**

6 If a Receiving Party is served with a subpoena or an order issued in other  
7 litigation that compels disclosure of any information or items designated in this  
8 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’  
9 EYES ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY”  
10 that party must:

11 (a) promptly notify in writing the Designating Party. Such  
12 notification shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing party who caused the subpoena or  
14 order to issue in the other litigation that some or all the material covered by the  
15 subpoena or order is the subject to this Protective Order. Such notification shall  
16 include a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be  
18 pursued by the Designating Party whose Protected Material may be affected.<sup>5</sup>

19 If the Designating Party timely seeks a protective order, the Party  
20 served with the subpoena or court order shall not produce any information  
21 designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
22 — ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE  
23 COUNSELS’ EYES ONLY” or “HIGHLY CONFIDENTIAL — ATTORNEYS’  
24 EYES ONLY AND SUBJECT TO PROSECUTION BAR” before a determination

25 <sup>4</sup> The Prosecution Bar applies to individuals who actually review another party’s “HIGHLY CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY AND SUBJECT TO PROSECUTION BAR” documents or information pursuant to  
27 this Order, and, for example, does not include other attorneys in an individual’s law firm who do not actually review  
28 such materials.

<sup>5</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and  
to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court  
from which the subpoena or order issued.

1 by the court from which the subpoena or order issued, unless the Party has  
2 obtained the Designating Party's permission. The Designating Party shall bear the  
3 burden and expense of seeking protection in that court of its confidential material –  
4 and nothing in these provisions should be construed as authorizing or encouraging  
5 a Receiving Party in this action to disobey a lawful directive from another court.

6 **10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**  
7 **PRODUCED IN THIS LITIGATION**

8 (a) Upon agreement by the Non-Party, the terms of this Order are  
9 applicable to information produced by a Non-Party in this action and designated as  
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES  
11 ONLY" or "CONFIDENTIAL – OUTSIDE COUNSELS' EYES ONLY" or  
12 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY AND SUBJECT  
13 TO PROSECUTION BAR." Such information produced by Non-Parties in  
14 connection with this litigation is protected by the remedies and relief provided by  
15 this Order. Nothing in these provisions should be construed as prohibiting a Non-  
16 Party from seeking additional protections.

17 (b) In the event that a Party is required, by a valid discovery  
18 request, to produce a Non-Party's confidential information in its possession, and  
19 the Party is subject to an agreement with the Non-Party not to produce the Non-  
20 Party's confidential information, then the Party shall:

21 1. promptly notify in writing the Requesting Party and the  
22 Non-Party that some or all of the information requested is subject to a  
23 confidentiality agreement with a Non-Party;

24 2. promptly provide the Non-Party with a copy of the  
25 Stipulated Protective Order in this litigation, the relevant discovery request(s), and  
26 a reasonably specific description of the information requested; and  
27  
28

3. make the information requested available for inspection  
by the Non-Party.

(c) If the Non-Party fails to object or (FFM) seek a protective  
order from this court within 14 days of receiving the notice and accompanying  
information, the Receiving Party may produce the Non-Party's confidential  
information responsive to the discovery request. If the Non-Party timely seeks a  
protective order, the Receiving Party shall not produce any information in its  
possession or control that is subject to the confidentiality agreement with the Non-  
Party before a determination by the court.<sup>6</sup> Absent a court order to the contrary,  
the Non-Party shall bear the burden and expense of seeking protection in this court  
of its Protected Material.

**11. UNAUTHORIZED DISCLOSURE OF PROTECTED  
MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has  
disclosed Protected Material to any person or in any circumstance not authorized  
under this Stipulated Protective order, the Receiving Party must immediately (a)  
notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
the person or persons to whom unauthorized disclosures were made of all the terms  
of this Order, and (d) request such person or persons to execute the  
"Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit  
A.

**12. INADVERTENT PRODUCTION OR PRIVILEGED OR  
OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain  
inadvertently produced material is subject to a claim of privilege or other

<sup>6</sup> The purpose of this provision is to alter the interested parties to the existence of confidentiality rights of a Non-  
Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this a court.

1 protection, the obligations of the Receiving Parties are those set forth in Federal  
2 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
3 whatever procedure may be established in an e-discovery order that provides the  
4 production without prior privilege review. Pursuant to Federal Rule of Evidence  
5 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
6 of a communication or information covered by the attorney-client privilege or  
7 work product protection, the parties may incorporate their agreement in the  
8 stipulated protective order admitted to the court.

9 **13. MISCELLANEOUS**

10 13.1 Right to Further Relief. Nothing in this Order abridges the  
11 right of any person to seek its modification by the court in the future.

12 13.2 Right to Assert Other Objections. By stipulating to the entry of  
13 this Protective Order no Party waives any right it otherwise would have to object to  
14 disclosing or producing any information or item on any ground not addressed in  
15 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
16 any ground to use in evidence of any of the material covered by this Protective  
17 Order.

18 13.3 Export Control. Disclosure of Protected Material shall be  
19 subject to all applicable laws and regulations relating to the export of technical data  
20 contained in such Protective Material, including the release of such technical data  
21 to foreign persons or nationals in the United States or elsewhere. The Producing  
22 Party shall be responsible for identifying any such controlled technical data, and  
23 the Receiving Party shall take measures necessary to ensure compliance.

24 13.4 Filing Protected Material.

25 Without written permission from the Designating Party or a court order  
26 secured after appropriate notice to all interested persons, party may not file in the  
27 public record in this action any Protected Material. A Party that seeks to file under  
28

1 seal any Protected Material must comply with Civil Local Rule 79-5. Protected  
2 Material may only be filed under seal pursuant to a court order authorizing the  
3 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-  
4 5, a sealing order will issue only upon a request establishing that the Protected  
5 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
6 protection under the law. If a Receiving Party's request to file Protected Material  
7 under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the  
8 Receiving party may file the Protected Material in the public record pursuant to  
9 Civil Local Rule 79-5(e) unless otherwise instructed by the court.

10 **14. FINAL DISPOSITION**

11 Within sixty (60) days after the final disposition of this action, as  
12 defined in paragraph 4, each Receiving Party shall return all Protected Material to  
13 the Producing Party or destroy it. As used in this subdivision, "all Protected  
14 Material" includes all copies, abstracts, compilations, summaries and any other  
15 format reproducing or capturing any of the Protected Material. Whether the  
16 Protected Material is returned or destroyed, the Receiving Party must submit a  
17 written certification to the Producing Party (and, if not the same person or entity, to  
18 the Designation Party) by the 60-day deadline that (1) identifies (by category,  
19 where appropriate) all the Protected Material that was returned or destroyed and  
20 (2) affirms that the Receiving Party has not retained any copies, abstracts,  
21 compilations, summaries, or other format of reproducing or capturing any of the  
22 Protected Material. Notwithstanding this provision, Outside Counsel of Record are  
23 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition  
24 and hearing transcripts, legal memoranda, correspondence, deposition and trial  
25 exhibits, expert reports, attorney work product, and consultant and expert work  
26 product, even if such materials contain Protected Material. Any such archival  
27  
28



1 copies that contain or constitute Protected Material remain subject to this  
2 Protective Order as set forth in Section 4 (DURATION).

3  
4 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

5 Dated: May 8, 2013.

6 /S/ FREDERICK F. MUMM  
7 FREDERICK F. MUMM  
8 UNITED STATES MAGISTRATE JUDGE  
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VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ [date] in the case of *Thermolife International Inc. v. Better Body Sports, LLC, et al.*, Case No. CV-12-09229 GAF (FFMx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_